

**IEERB**

**MEDIATION AND FACTFINDING  
FREQUENTLY ASKED QUESTIONS**

1. Q Who appoints the mediators and factfinders?  
A IEERB appoints them, trying to match the individual's skills and experience with the case assignment.
  
2. Q How do we notify IEERB of an impasse?  
A By using the Impasse link on IEERB's website, by e-mailing an IEERB staff member, or fax your request to 317-233-6632.  
It is mandatory for the parties to notify IEERB if the contract is not ratified prior to October 1<sup>st</sup>.
  
3. Q If IEERB declares us at impasse on 9/30/2011, can we continue to bargain?  
A. Yes; however, you are required to notify IEERB no later than October 1<sup>st</sup> if you have not reached settlement so that a mediator can be assigned.
  
4. Q What if we are not settled by December 31, 2011?  
A If IEERB statutory deadlines are honored, that would be impossible. The law specifies that factfinding must culminate with the factfinder imposing contract terms on the parties.
  
5. Q Can we request a mediator prior to October 1<sup>st</sup>?  
A No mediator will be assigned until October 1<sup>st</sup>. The statute clearly states mediation cannot commence until sixty (60) days following the official beginning of bargaining, which is August 1.
  
6. Q When will I be required to submit my Last Best Offer (LBO)?  
A At the final mediation session, whether it's the first, second, or third session.

7. Q What are the costs for mediation and factfinding?  
A Mediation is \$800/day and Factfinding is \$1200/day. The costs will be based on hours spent on the cases based on a 7.5 hour day. Additional costs, such as mileage, will be split equally between the parties.
8. Q Can a party proceed directly to factfinding and bypass mediation?  
A No. At least one mediation session is required.
9. Q How much time will be allotted for factfinding presentations and rebuttal?  
A Presentations will be limited to two (2) hours per side. Rebuttals will be limited to one (1) hour per side.
10. Q If settlement is achieved, how much time do we have to get the contract ratified?  
A Both parties should have a process in place to ratify within three (3) business days.
11. Q How do I prepare a “last best offer?”  
A That is up to the parties; however, the parties are strongly urged to follow the requirements stated in IC 20-29.
12. Q What happens if one or both parties LBO results in deficit financing?  
A Deficit financing is strictly prohibited by statute. The fact finder is required to return the LBO to the offending party(s) with instruction to correct the errant LBO within twenty four (24) hours.
13. Q What if our proposal includes General Fund revenue as well as Rainy Day funds and cash balance and we go to factfinding?  
A General Fund revenues can only be used in factfinding. The offer prior to factfinding must be rescinded and can contain only General Fund revenue.
14. Q Can the factfinder’s decision include proposals from both parties?  
A No, the factfinder, by statute, must select one LBO or the other.

15. Q Can a contract contain a grievance procedure?  
A There is actually a conflict in statute. Section 5 says a contract may contain a grievance procedure, but 4.5(a)(5) says a contract cannot contain anything not expressly listed in section 4.
16. Q Can a contract contain “working conditions” language?  
A No, working conditions are neither discussable or bargainable.
17. Q Can discussable items be bargained?  
A No, they are prohibited by statute from being bargained.
18. Q What if we start bargaining well after August 1, say September 20, do the timelines get pushed back by 20 days?  
A No, the timelines are firm.
19. Q If a factfinding decision is appealed to the IEERB Board, can the Board alter the terms of the decision?  
A The board’s decision is restricted to bargainable (Section 4) items; it cannot create deficit financing and it cannot go beyond the last best offer.
20. Q What constitutes a “frivolous” unfair practice complaint?  
A The Board will make the determination. If it’s found to be frivolous, the party that filed the complaint is liable for costs and attorney fees.
21. Q Will the parties be permitted to call witnesses during the factfinding proceedings?  
A No. Factfinding is an informal presentation not a legal or quasi-legal proceeding.
22. Q Are mediation and factfinding sessions open to the public?  
A Mediation is confidential while factfinding is a public forum, although members of the audience will not be permitted to testify or comment.
23. Q How many mediation sessions are permitted?

- A Mediation is limited to a maximum of three (3) sessions.
24. Q What if we do not have the certification sheet from IDOE or DLGF? What figures should be used?  
A Use the IDOE August estimate and the estimate of miscellaneous revenue from Budget Form 2.
25. Q Who should I call with legal questions regarding the new law?  
A IEERB is a neutral agency; therefore, its staff is prohibited from dispensing legal advice. You should contact your organization's legal staff or the staff of an association of which you are a member. Andrew Kossack at IDOE can answer questions and provide general information but cannot act as your attorney.
26. Q What is the maximum term of a contract, ratified after July 1?  
A Maximum term is 2 years. The length of the contract may not exceed past the end of the state budget biennium. This is a two-year period running from July 1 through June 30, beginning and ending in odd years.
27. Q Is the decision of the factfinder appealable?  
A Yes, to the IEERB Board. The decision of the Board is appealable to a court of law.
28. Q Will the factfinding hearing be recorded?  
A Yes. If either party requests a transcript, the requesting party is responsible for the arrangements and costs. If both parties make a request, the cost will be shared equally.
29. Q What happens if one party or the other cannot pay their share of the cost of either the mediation or factfinding?  
A IEERB pays the cost of the mediator and factfinder and the parties will be billed and reimbursement shall be paid to IEERB. Parties that fail to reimburse their expenses should anticipate that IEERB and/or IDOE will initiate legal action to recover any outstanding balance.

30. Q Is IEERB a neutral agency?  
A Yes indeed. All cases will be considered on their merits.
31. Q What if we cannot meet on the date(s) established by either the mediator of the factfinder?  
A IEERB will no longer be able to continue its long standing practice of flexibility in scheduling and deadlines. Mediations and factfindings will be scheduled like court dates without consideration of the convenience of the parties. This is a statutory process and it must take precedence.
32. Q What if we do not want the individual mediator or factfinder assigned to our case?  
A If there is a legitimate reason for another person to be assigned, IEERB will do its best to accommodate the request. The agency will decide whether or not the request is credible.
33. Q Are Charter schools included in the definition of “school employer” under IC 20-29 (PL 48)?  
A Yes. IC 20-29-2-15(B) states that they are included as established under IC 20-24. Charter schools can, but are not required to bargain collectively.
34. Q Are teacher evaluation procedures bargainable?  
A IC 20-29-6-4.7(A) states, “A school employer may not bargain collectively with the exclusive representative on teacher evaluations procedures and criteria after this section has been enacted into law.” The weighting of the four criteria for teacher salary increases is bargainable.
35. Q Can the mediator also serve as a factfinder in the same case?  
A IC 20-29-8-10.1 states, “A person who has served as a mediator in a dispute between a school employer and an exclusive representative may not serve as a factfinder in a dispute in the same school corporation within a period of five (5) years except by mutual consent of the parties.”

36. Q The school corporation and union have tentatively agreed an agreement. The union will ratify late September. Can the board wait until its regular board meeting in early October to ratify without jeopardizing itself for having been at impasse September 30<sup>th</sup> by operation of law?
- A Since both sides have tentatively agreed the agreement and one side has ratified, waiting until the next regularly scheduled meeting is acceptable. If the board should not ratify, impasse would be effective immediately.
37. Q Will the factfinder disqualify an LBO that contains prohibited subjects of bargaining under IC 20-29-6-4.5?
- A Yes, the factfinder should not consider LBO's containing prohibited items or which creates deficit financing.
38. Q Are we required to send a copy of our ratified contract to IEERB?
- A Yes. The contract can be submitted through the "Submit A Ratified Contract" link on the website, or mailed to the attention of the Research Division. IEERB cannot keep its database or salary statistics current without the contract and salary information.